

**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
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**Testimony COMMENTING on HCR224 HD1**  
**CONVENING A DIGITAL GAMING ADVISORY GROUP TO ASSESS AND**  
**MONITOR PREDATORY PRACTICES IN THE DIGITAL GAMING INDUSTRY.**

SENATOR LAURA H. THIELEN, CHAIR  
SENATE COMMITTEE ON GOVERNMENT OPERATIONS

SENATOR KARL RHOADS, CHAIR  
SENATE COMMITTEE ON JUDICIARY

Hearing Date: April 18, 2019

Room Number: 325

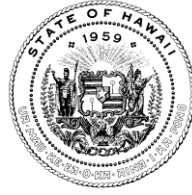
1 **Fiscal Implications:** N/A.

2 **Department Testimony:** There is emerging researching that video game loot boxes may be  
3 linked to gambling behaviors, and that loot boxes and gambling may lead to increases in problem  
4 gambling amongst gamers (Zendle 2018).

5 The Department of Health acknowledges the leadership of the Legislature in investigating this  
6 issue and will provide relevant subject-matter expertise to the advisory group to explore policy  
7 solutions to exploitive practices in digital video games.

8 Thank you for the opportunity to testify.

9



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
Senate Committee on Government Operations  
and  
Senate Committee on Judiciary**

**Thursday, April 18, 2019  
2:45 p.m.  
State Capitol, Conference Room 325**

**On the following measure:  
H.C.R. 224, H.D. 1, RELATING TO CONVENING A DIGITAL GAMING ADVISORY  
GROUP TO ASSESS AND MONITOR GAMBLING AND PREDATORY PRACTICES  
IN THE DIGITAL GAMING INDUSTRY**

Chair Thielen, Chair Rhoads, and Members of the Committees:

My name is Stephen Levins, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection (OCP). The Department supports this concurrent resolution.

The purpose of this concurrent resolution is to convene a Digital Gaming Advisory Group to examine, assess, and monitor predatory or exploitive practices in digital games and to make recommendations.

Concerns about the addictive nature of video games, particularly among children, have been raised by parents and mental health experts since video games were introduced decades ago. Recent trends in gaming include games that contain features known as "pay to win." In most video games, players earn credits that can be used to

unlock “loot boxes” containing random rewards that enhance a player’s effectiveness and advancement in the game. Video games with “pay to win” features also allow players to advance quickly by giving them the option to purchase credits to unlock a “loot box.” Mental health professionals have raised concerns that predatory mechanisms, such as “loot boxes,” can present the same psychological, addictive, and financial risks as gambling. Social commentators have also remarked that paying real money to unlock “loot boxes” without knowing what kind of reward is inside has all the indicia of gambling.

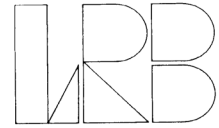
The Department acknowledges the serious issues concerning these types of video games and welcomes being a member of this gaming advisory group.

Thank you for the opportunity to testify on this resolution.

Charlotte A. Carter-Yamauchi  
Director

Shawn K. Nakama  
First Assistant

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LEGISLATIVE REFERENCE BUREAU  
State of Hawaii  
State Capitol, Room 446  
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## Written Comments

### **HCR224, HD1**

### **CONVENING A DIGITAL GAMING ADVISORY GROUP TO ASSESS AND MONITOR GAMBLING AND PREDATORY PRACTICES IN THE DIGITAL GAMING INDUSTRY**

Charlotte A. Carter-Yamauchi, Director  
Legislative Reference Bureau

Presented to the Senate Committees on Government Operations and Judiciary

Thursday, April 18, 2019, 2:45 p.m.  
Conference Room 325

Chairs Thielen and Rhoads and Members of the Committees:

Good afternoon Chairs Thielen and Rhoads and members of the Committees, my name is Charlotte Carter-Yamauchi and I am the Director of the Legislative Reference Bureau. Thank you for providing the opportunity to submit written comments on H.C.R. No. 224, H.D. 1, Convening a Digital Gaming Advisory Group to Assess and Monitor Gambling and Predatory Practices in the Digital Gaming Industry.

The purpose of this measure is to convene a Digital Gaming Advisory Group to examine, assess, and monitor evolving gambling and predatory practices in digital video games that may present a potential public health or consumer risk, potential negative impacts to the public, provide for education and awareness, and make recommendations.

The Digital Gaming Advisory Group is:

- (1) To be co-chaired by the Chairs of the House and Senate Standing Committees on Judiciary, and include the Attorney General or the Attorney General's designee, the Director of the Office of Consumer Protection in the Department of Commerce and Consumer Affairs or the Director's designee, the Director of

Health or the Director's designee, and any other members with relevant oversight or experience who may be appointed by the co-chairs; and

- (2) Requested to submit a report of its findings and recommendations to the Legislature no later than twenty days before the convening of each of the Regular Sessions of 2020 to 2024.

The measure also requests the Legislative Reference Bureau to provide final drafting support to the Digital Gaming Advisory Group for its reports.

The Bureau takes no position on the merits of this measure but submits the following comments for your consideration.

We have some concerns with how the measure is currently drafted with respect to the work requested of the Bureau. The language of the measure requires the Bureau to assist the Digital Gaming Advisory Group with "final drafting support" for its reports. As drafted, it is unclear what "final drafting support" entails, especially since the measure doesn't provide any details on if and when the Advisory Group will be providing the Bureau with any drafts of its reports to finalize.

Furthermore, while the Digital Gaming Advisory Group is to be co-chaired by legislators, every other member of the Advisory Group is not of the Legislature. In addition, the Advisory Group will deliberate for four years until June 30, 2024. The Bureau cannot commit its existing limited resources to provide such long-term services to a single Advisory Group consisting of primarily non-Legislators. Such an allocation of Bureau resources could foreseeably result in the reduction of services to other members of the Legislature during the four-year life of the Advisory Group.

However, if the Committees decide to recommend the adoption of this measure and desire to keep the Bureau involved, we respectfully request that the measure be amended to specifically clarify that the Bureau assist with only finalizing the Task Force's draft reports. We also would request that it be specified that the draft reports be submitted to the Bureau no later than September 1<sup>st</sup> of each year, until September 1, 2023, so that work on the reports would not adversely impact our ability to provide our core services to the Legislature for the upcoming Regular Sessions.

If the measure is amended to address the concerns noted above to have the Bureau assist with finalizing the Advisory Group's draft reports, the Bureau believes that the services requested under the measure would be manageable and that the Bureau will be able to provide the services in the time allotted; provided that the Bureau's interim workload is not adversely impacted by too many other studies or additional responsibilities, such as conducting studies, writing or finalizing other reports, drafting legislation, or any combination of these for the Legislature or for other state agencies, task forces, or working groups that may be requested or required under other legislative measures.

Thank you again for your consideration.



**TESTIMONY OF TINA YAMAKI  
PRESIDENT  
RETAIL MERCHANTS OF HAWAII  
April 18, 2019**

**Re: HCR 224 HD 1 CONVENING A DIGITAL GAMING ADVISORY GROUP TO ASSESS AND MONITOR PREDATORY PRACTICES IN THE DIGITAL GAMING INDUSTRY.**

Good afternoon Chairperson Thielen, Chairperson Rhoads and members of the Senate Committee on Government Operations and the Committee on Judiciary. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii (RMH) as founded in 1901 and is a statewide, not for profit trade organization committed to the growth and development of the retail industry in Hawaii.

The retail industry is one of the largest employers in the state, employing 25% of the labor force.

We are in opposition to HCR 224 HD 1 Convening A Digital Gaming Advisory Group To Assess And Monitor Predatory Practices In The Digital Gaming Industry. This resolution calls for an advisory group lead by the Attorney General, the Chairs of the House and Senate Consumer Protection and Judiciary Committees, the Executive Director of Consumer Protection, Director of Health or their designees, and any others invited by the working group's Chair to examine, assess, and monitor predatory or exploitive practices in digital games and to make recommendations.

**We question the expertise of this advisory group with regards to the intricacies of digital gaming and what the software and gaming industry has been doing to address this matter. We also wonder why this suggested advisory group participants are instead not being encouraged to participate in the upcoming Federal Trade Commission's upcoming workshop on loot boxes.**

The video game industry has been a long time partner of the retail industry here in Hawaii and throughout the United States. Through the industry's self-regulatory body, the Entertainment Software Ratings Board (ESRB), they work with retailers to provide consumers with information about the ratings and content of video games to support store policy regarding the sale of M (Mature) rated games.

In November 2005, the ESRB Retail Council (ERC) was voluntarily established to facilitate regular communication and input for consideration on matters of common interest to U.S. computer and video game retailers and the ESRB. Chief among these interests is to ensure that ERC members support ratings education and store policy enforcement programs.

**Retailers and game publishers take these issues seriously, and the ESA and its member companies remain actively engaged in the current conversation around in-game mechanics such as "loot boxes" with parents and players.** For example, the ESRB took steps last year help ensure that consumers are better informed about the presence of loot boxes in certain video games. In addition to age rating categories and content descriptors, the ESRB now also assigns an "In-Game Purchases" label to physical (e.g., boxed) that appear on games sold at retailers throughout Hawaii. **The In-Game Purchases label is assigned to games with in-game offers to purchase digital goods with real world currency**, including but not limited to, bonus



levels, skins, surprise items (such as item packs, loot boxes, mystery awards), music, virtual coins and other forms of in-game currency, subscriptions, season passes, and upgrades (e.g., to disable ads).

**The ESRB expanded the use of this important disclosure to physical games, from downloadable and mobile games,** in February 2018 following extensive research and discussion with parents to assess general awareness and understanding as well as concerns about loot boxes. Their research indicated very low awareness and comprehension of what a loot box is among parents. **Moreover, that research revealed that upon explanation of what a loot box is, parents' primary concern is not the surprise aspect but rather the spending of money.**

In conjunction with the new labeling, the ESRB launched **ParentalTools.org, an easy-to-use one-stop resource for parents.** This website includes: a video featuring the new "In-Game Purchases" notice; links to step-by-step guides for setting parental controls to help parents manage which games their children play, how long they play, how much they spend and other settings; information on how to set up a child account – so that parents receive notification whenever a purchase is made; and a link to other parent resources.

While members of the Hawaii Retail Merchants understand and appreciate the concerns of the sponsor, we don't believe it is necessary or a valuable use of resources to create a digital gaming advisory group at this time. In addition to the negative perception such an action would create for the small, but growing video game industry here in Hawaii, not to mention the broader tech community, but its **efforts are unnecessary in light of the recent announcement by the Federal Trade Commission (FTC) to hold a public work shop later this year.**

In light of these considerations—particularly the **FTC's announcement to begin a workshop later this year we urge you to hold this matter and instead encourage interested stakeholders to participate in the Federal Trade Commission's upcoming workshop on loot boxes.**

Mahalo again for this opportunity to testify.



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**Written Testimony of  
Tim Johnson, Senior Director  
Entertainment Software Association  
Presented for the Record to  
Joint Senate Committee Government Operations and Judiciary  
April 18, 2019**

Chair Persons Thielen, Rhodes and members of the Committees on Government Operations and Judiciary:

On behalf of the Entertainment Software Association (ESA) and its members,<sup>1</sup> thank you for the opportunity to submit testimony on House Concurrent Resolution 224, which seeks to create a digital gaming advisory group to examine and make recommendations related to the business practices of the computer and video game industry.

The ESA is the U.S. trade association representing the publishers of computer and video games played on consoles, personal computers, mobile devices, and the internet. We welcome the opportunity to speak with members of the committee today about our dynamic industry. We produce the most compelling interactive entertainment for consumers, but we only succeed if we provide our audiences with fun and rewarding experiences. Players of video games are vocal about what they love or hate about games, which is why our companies are constantly adjusting their approach in response. This marketplace feedback ensures that publishers remain keenly responsive to consumer needs.

ESA recently testified in support of another resolution, HCR 216, also sponsored by Representative Lee and recently passed by the Senate Higher Education Committee, that “supports the University of Hawaii in developing a comprehensive esports program designed to promote students' passion for video games through competition and social interactions, foster personal growth and academic research, and educate and prepare students for opportunities in the video game industry.” It is important for Committee members to know that resolutions like the one we are discussing today send unnecessarily negative messages to both the marketplace and the industry that significantly undermine the positive aspects of state supported initiatives like the University of Hawaii’s Academy of Creative Media and Hawaii Pacific University’s esports program.

We appreciate the sponsor’s concerns in this area, but be assured that video game publishers take these

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<sup>1</sup>ESA members include: 505 Games; Activision Blizzard, Inc.; Bandai Namco Entertainment Inc.; Bethesda Softworks, Capcom USA, Inc.; Deep Silver; Disney Interactive Studios, Inc.; Electronic Arts; Epic Games, Inc.; Focus Home Interactive; Gearbox Publishing; GungHo Online Entertainment American, Inc.; Intellivision Entertainment; Kalypso; Konami Digital Entertainment; Legends of Learning; Magic Leap; Marvelous USA, Inc.; Microsoft Corporation; Natsume Inc.; NCSoft; Nexon America, Inc.; Nintendo of America Inc.; NVIDIA; Outright Games; Phosphor Studios; Rebellion; Riot Games; Sega of America; SixFoot; Sony Computer Entertainment of America; Square Enix, Inc.; Take-Two Interactive Software, Inc.; Tencent, Inc.; THQ Nordic; Triseum; Ubisoft Entertainment, Inc.; Warner Bros. Interactive Entertainment Inc.; and Wizards of the Coast.

issues seriously, which is why the ESA and its member companies remain actively engaged in this ongoing conversation with parents and players. In fact, the Federal Trade Commission (FTC) will hold a workshop on August 7, 2019 regarding “loot boxes.” As the nation’s preeminent consumer protection agency, the FTC has a strong track record of investigating complex consumer protection issues, often involving emerging tech issues, through multi-stakeholder public workshops. The FTC’s workshops typically feature a broad spectrum of stakeholders and viewpoints, from industry to consumers and from advocacy organizations to academia. These views are submitted not only through the live workshop but also through written comments that are filed and maintained on the public record.<sup>2</sup>

This public workshop will provide an excellent opportunity for a full vetting of the public policy considerations raised by these resolutions with a wide range of participants. All stakeholders, including those from Hawaii, will be afforded an opportunity to participate in the FTC’s workshop on loot boxes, either through written comments and/or participation in panel discussions, to share their important views.

For this reason, among others, ESA opposes passage of HCR 224. We believe that the proposed digital gaming advisory group here in Hawaii would be duplicative of the more comprehensive FTC workshop.

We also respectfully disagree with the false and misleading ways in which this resolution mischaracterizes our industry’s practices by using questionable scientific claims as well as misstatements on current policy developments regarding loot boxes around the world.

We believe it is important to clarify some misconceptions about loot boxes, which have been found in games for over 10 years. Loot boxes are optional features in some games and can be purchased or earned through game play. It is not necessary or required for players to purchase loot boxes to advance within a game. Loot boxes are neither gambling nor exploitive of consumers. With a loot box, a player does not place a wager that may be returned or increased. Rather, the player spends a set amount to acquire a limited number of virtual items. There may be an element of surprise in what the player receives, but the player always gets items of value within the game.

Critically, these virtual items cannot be removed from the game or cashed out under the applicable legal terms. In fact, where publishers find unauthorized trading of virtual items via unauthorized secondary marketplaces, they take a variety of steps to prevent that activity, including: imposing temporary suspensions, banishing the bad actors from the game and disabling access to their accounts, and other mitigation tactics to ensure a fair and even playing field within the game environment.

The international picture is considerably more complex than outlined within HCR 224, which focused on just three countries. It is important to note that these countries are outliers in this global conversation, and rarely would the United States look to China or any other country as setting a desired standard of consumer protection. Several other international bodies, including regulators in the UK, France, Australia, Ireland, and Germany, have investigated this issue and have either declared that loot boxes

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<sup>2</sup> In 2010, for example, the Commission hosted a public workshop to examine potential updates to the Children’s Online Privacy Protection Act (“COPPA”) and Rule, enacted by the Commission in 2000 to govern the collection, use, and dissemination of personal information of children under 13.<sup>[1]</sup> The workshop featured children’s advocacy and parent organizations, tech companies, and academics all discussing a wide range of issues in the children’s privacy arena. This workshop laid the groundwork for significant updates to the regulation as well as key consumer and business educational efforts around children’s privacy.

are not gambling or have declined to limit their use. Most recently, the Australian government ruled that no further inquiry into “gaming micro-transactions for chance-based items” was warranted.

Against this backdrop, the industry continues to work to provide consumers a great game experience. That includes providing them with helpful pre-purchase information. For example, in addition to any disclosures individual publishers may make, the industry’s Entertainment Software Rating Board (ESRB) has taken steps to help ensure that consumers are better informed about the presence of loot boxes in certain video games. The ESRB, which provides age rating categories and content descriptors for games, also assigns an “In-Game Purchases” label to physical (*e.g.*, boxed) video game products as well as online and mobile games. These categorizations are placed on games with in-game offers to purchase digital goods with real world currency, including but not limited to, bonus levels, skins, surprise items (such as item packs, loot boxes, mystery awards), music, virtual coins, and other forms of in-game currency, subscriptions, season passes, and upgrades (*e.g.*, to disable ads).

Research by the ESRB has consistently shown that parents’ primary concern is on spending amounts, not the surprise element. In addition to categorization, the ESRB has launched ParentalTools.org, an easy-to-use, one-stop resource for parents, which includes helpful features such as step-by-step guides for using parental controls (*e.g.*, the ability to set spending limits on the child account). The major game console makers also individually provide extensive videos and guides on their parental controls.

In light of these considerations—particularly the FTC’s announcement to begin a workshop later this year—we respectfully urge members of the Committees on Government Operations and Judiciary to vote against further consideration of this resolution, and encourage interested stakeholders to participate in the Federal Trade Commission’s upcoming workshop on loot boxes.

Thank you.



**Testimony to the Senate Committees on Government Operations and Judiciary  
Thursday, April 18, 2019 at 2:45 P.M.  
Conference Room 325, State Capitol**

**RE: HOUSE CONCURRENT RESOLUTION 224 HD1, CONVENING A DIGITAL GAMING  
ADVISORY GROUP TO ASSESS AND MONITOR PREDATORY PRACTICES IN THE DIGITAL  
GAMING INDUSTRY.**

Chairs Thielen and Rhoads, Vice Chairs Inouye and Wakai, and Members of the Committees:

The Chamber of Commerce Hawaii ("The Chamber") **opposes** House Concurrent Resolution 224 HD1, which seeks to create a digital gaming advisory group to examine and make recommendations related to the business practices of the computer and video game industry.

The Chamber is Hawaii's leading statewide business advocacy organization, representing 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

While we appreciate the concerns in the area of video game loot boxes, we believe that the active engagement of the video game industry, the reaction of the global marketplace to address consumer concerns, and a recent announcement by the Federal Trade Commission (FTC) to hold a public workshop on loot boxes later this year dismisses the need for state action and expenditure of state resources at this time.

Earlier this month, it was announced that the FTC would hold its public workshop on August 7, 2019 in Washington, DC. The FTC has stated that this workshop will bring together a variety of stakeholders, comprised of "industry representatives, consumer advocates, trade associations, academics, and government officials" to discuss concerns regarding the marketing and use of loot boxes and other in-game purchases. The FTC also noted that this workshop will focus on topics including the research examining consumer behavior, including that of children and adolescents, regarding video games and digital transactions, and consumer awareness and education about in-game digital transactions. All stakeholders, including those from Hawaii, will be afforded an opportunity to participate in the FTC's workshop on loot boxes, either



through written comments and/or participation in panel discussions, to share their important views.

The video game industry today is the largest sector of the entertainment business in the United States with \$43 billion in sales in 2018. This is an industry that is creating new, highly-educated, highly-compensated jobs around the world. Stakeholders in Hawaii should look at ways to support the progress of new industries and sectors and continue to create a positive environment for the high-tech industry. The opportunity to be involved in the video game industry provides a unique opportunity, especially through public-private investments through schools which already includes the University of Hawaii and Hawaii Pacific University.

For the reasons above, we respectfully request that this resolution be held and appreciate the opportunity to share our concerns.

# HAWAII YOUTH SERVICES NETWORK

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Rick Collins, President

Judith F. Clark, Executive  
Director

Bay Clinic

Big Brothers Big Sisters of  
Hawaii

Bobby Benson Center

Child and Family Service

Coalition for a Drug Free Hawaii

Collins Consulting, LLC

Domestic Violence Action Center

EPIC, Inc.

Family Programs Hawaii

Family Support Hawaii

Friends of the Children of  
West Hawaii

Hale Kipa, Inc.

Hale 'Opio Kauai, Inc.

Hawaii Children's Action  
Network

Hawaii Health & Harm  
Reduction Center

Hawaii Student Television

Ho'ola Na Pua

Kahi Mohala

Kokua Kalihi Valley

Maui Youth and Family Services

Na Pu'uwai Molokai Native

Hawaiian Health Care  
Systems

P.A.R.E.N.T.S., Inc.

Parents and Children Together  
(PACT)

PHOCUSED

PFLAG – Kona Big Island

Planned Parenthood of the  
Great Northwest and  
Hawaiian Islands

Residential Youth Services  
& Empowerment (RYSE)

Salvation Army Family  
Intervention Services

Sex Abuse Treatment Center

Susannah Wesley Community  
Center

The Catalyst Group

April 16, 2019

Senator Laura Thielen, Chair  
And members of the Committee on Government Operations

Senator Karl Rhodes, Chair  
And members of the Committee on Judiciary

## **TESTIMONY IN SUPPORT OF HCR 224 HD 1 CONVENING A DIGITAL GAMING ADVISORY GROUP TO ASSESS AND MONITOR PREDATORY PRACTICES IN THE DIGITAL GAMING INDUSTRY.**

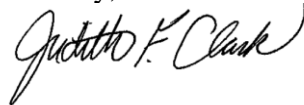
Hawaii Youth Services Network (HYSN), a statewide coalition of youth-serving organizations, supports HCR 224 HD 1 Convening a Digital Gaming Advisory Group to Assess and Monitor Predatory Practices in the Digital Gaming Industry.

Video games that contain variable-reward mechanisms (called loot boxes) are widely and easily available to consumers. Children and youth who play these games are introduced to the thrills of gambling at an age when their brains are not fully developed. They are vulnerable to developing behavioral addiction to gambling, and do not have the maturity and knowledge to recognize the risks they encounter. Parents and other responsible adults are often unaware of these features in the games their children are using.

It is important to review and consider the potential risks of these games and consider regulation to protect consumers.

Thank you for this opportunity to testify.

Sincerely,



Judith F. Clark, MPH  
Executive Director

**HCR-224-HD-1**

Submitted on: 4/16/2019 5:28:11 PM

Testimony for GVO on 4/18/2019 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dara Carlin, M.A.	Individual	Support	No

Comments:



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Committee on Governmental Operations, Committee on Judiciary  
Thursday, April 18, 2019 2:45 p.m. Room 325  
HCR224, HD1 Relating to a Digital Gaming Advisory Group

#### TESTIMONY

Susan Dursin, Legislative Committee, League of Women Voters of Hawaii

Chair Thielen, Vice-Chair Inouye and Chair Rhoads, Vice-Chair Wakai, and Committee Members:

The League of Women Voters of Hawaii strongly supports HCR224, HDI, which would convene a digital advisory group to assess and monitor gambling and predatory practices in the digital gaming industry.

For many years, the League of Women Voters of Hawaii has opposed legalized gambling in the belief that government should not fund its activities out of programs that bring social ills to many of its people. At the same time, the League is always in favor of well-grounded study and sound decision making.

HCR224 HD1 acknowledges the growing access to digital gambling and the increasing threat of psychological manipulation to participants, especially the young. With evidence of harmful effects emerging at an ever-growing rate, Hawaii needs to examine the evidence in a measured way and make recommendations as to the best methods of dealing with this problem.

The advisory group would be led by chairs of both House and Senate judiciary committees and would include the Attorney General, the Director of Health, and the Director of Consumer Protection. Such structure implies a serious effort to address the problem.

The timeline appears to allow a thorough but not hurried approach, with reporting due before each legislative session. Establishing a 2014 sunset for the group allows it to take advantage of new data as it emerges, which is important: many aspects of digital gaming are new and largely unexamined.

Finally, enlisting the Legislative Reference Bureau's assistance in drafting reports should ensure clear, concise reporting. Both legislators and the public can look forward to committee findings.

We urge you to pass HCR224, HD1.

Thank you for the opportunity to submit testimony.



**HCR-224-HD-1**

Submitted on: 4/17/2019 6:02:40 PM

Testimony for GVO on 4/18/2019 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nathan Hutchinson	Individual	Support	No

Comments:

Aloha,

I believe it is very important to have protective government oversight on the Digital Gaming industry.

The predatory tactics used by the digital gaming industry are always changing. To combat this, I believe there should be an advisory group, made of Subject Matter Experts, to provide law makers with insight and guidance.

We need to protect children and people with gambling addictions from the video game industry that has proven incapable of self regulation.

Thank you,  
Nathan



**WRITTEN STATEMENT OF KEITH S. WHYTE  
EXECUTIVE DIRECTOR  
NATIONAL COUNCIL ON PROBLEM GAMBLING**

**HC 224 Convening A Digital Gaming Advisory Group**

**JUDICIARY COMMITTEE**

**Thursday, April 18, 2019**

Dear Chair Lee, Vice Chair Buenaventura and Members of the Committee:

The National Council on Problem Gambling is pleased to express our support for HC 224 Convening A Digital Gaming Advisory Group To Assess And Monitor Predatory Practices in the Digital Gaming Industry. In particular we are concerned that many features of loot boxes are similar to those of slot machines. Players who pay to play a slot machine or unlock a loot box are risking something of value to them for the chance of winning a prize or reward that is also of value. Factors common to many loot boxes and slot machines include random distribution of prizes, variable value of the prizes plus visual and sound cues associated with participation and reward. These features are well known to trigger urges to play along with increased excitement and faster play. For some users this leads to the development of problems. These problems include financial harm, emotional difficulties, poor work or school performance, poor mental and physical health, higher rates of depression and substance abuse.

NCPG bases our position on our 47 years of experience in gambling addiction prevention, education, treatment, enforcement, research and recovery as well as our work with gambling operators, vendors, regulators and players themselves on responsible gaming. While the research on loot boxes and gambling problems is still in its infancy, the published reports have all shown cause for concern. These concerns include:

- Gambling addiction-type risks (people spending too much time and money)
- Transitional risks (increased participation in real money gambling, especially in relation to young people)
- Consumer protection-type risks (lack of transparency, no regulation)

The most recent research in this area concluded that paying for loot boxes is linked to problem gambling.<sup>1</sup> An earlier large study of more than 7,000 gamers found evidence for a link between the amount that gamers spent on loot boxes and the severity of their gambling problems.<sup>2</sup> In March 2019 a law review article reviewed specific case studies and regulatory responses,

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<sup>1</sup> Zendle, David, et al. *Paying for Loot Boxes Is Linked to Problem Gambling, Regardless of Specific Features Like Cash-out and Pay-to-win: A Preregistered Investigation*. *PsyArXiv*, 12 October 2018.

<sup>2</sup> Zendle, David and Cairns, Peter *Video game loot boxes are linked to problem gambling: Results of a large-scale survey*. *PsyArXiv*, August 2018.

proposed solutions and identified difficulties with industry-based solutions.<sup>3</sup> The scientific journal *Nature* published an editorial urging the scientific community to “engage actively in the debate regarding the status of video game loot boxes and the potential risks they present for vulnerable populations and the authors also found that nearly half of the loot boxes they reviewed met psychological criteria for gambling even though those games are rated as appropriate for adolescent players under 18.”<sup>45</sup> Noted gambling researcher Dr. Mark Griffiths noted loot boxes meet almost any definition of gambling currently used in the field of social sciences.<sup>6</sup>

NCPG also believes an approach to loot boxes, particularly concerning potential negative impacts on youth, should be based on a precautionary principle. NCPG believes “The precautionary approach rejects the notion that risks are acceptable until harm has been proven or that risks can continue unmitigated until such time as the effectiveness of a harm minimization measure is proven.”<sup>7</sup> Therefore the mandate of the proposed Commission to “examine, assess, and monitor predatory or exploitive practices in digital games and to make recommendations” is particularly appropriate as there is a reasonable concern that gambling-related harm may occur. Please feel free to contact us directly with any comments or questions.

###

The National Council on Problem Gambling was founded in 1972 and is neutral on legalized gambling. We serve as the national advocate for programs and services to assist problem gamblers and their families. We improve health and wellness by leading state and national stakeholders in the development of comprehensive policy and programs to reduce the personal, social and economic costs of problem gambling. If you or someone you know has a gambling problem, call or text the National Problem Gambling Helpline at 1-800-522-4700 or visit [www.ncpgambling.org/chat](http://www.ncpgambling.org/chat) for confidential help.

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<sup>3</sup> Andrew Moshirnia, *Precious and Worthless: A Comparative Perspective on Loot Boxes and Gambling*, 20 Minn. J.L. Sci. & Tech. 77 (2018).

<sup>4</sup> *Editorial: Gaming or Gambling?* *Nature: Human Behavior*, Vol 2, August 2018

<sup>5</sup> Aaron Drummond and James Sauer, *Comment: Video game loot boxes are psychologically akin to gambling*. *Nature: Human Behavior*, Vol 2, August 2018.

<sup>6</sup> Griffiths, Mark, *Is the Buying of Loot Boxes In Video Games A Form of Gaming or Gambling?* GLRE 2018.

<sup>7</sup> Massachusetts Gaming Commission, *Responsible Gaming Framework*, Version 2.0, May 2018.

**HCR-224-HD-1**

Submitted on: 4/18/2019 9:05:27 AM

Testimony for GVO on 4/18/2019 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Edward White	Individual	Support	Yes

## Comments:

Aloha to the members of the legislature. I am submitting testimony on behalf of myself, as a resident of Honolulu, a life-long gamer, and a student of the practices described in this bill.

I wish to submit my support for HCR224, which creates a Hawaii Digital Gaming Advisory Group to monitor and evaluate video game business practices for predatory and exploitative mechanisms.

My support stems from the increasing use of predatory practices in digital micro-transactions, particularly lootboxes, which use variable reward operant conditioning that is known to induce addiction through experiments and in practice in slot machines. Furthermore, there is evidence of large publishers seeking to use the power of game systems to coerce consumers into additional purchases, such as the recording of the EA CEO describing to investors how moments of frustration are channeled into additional purchases. Though widespread backlash and previous efforts on the part of this legislative body have caused the game industry to be more cautious about certain community redlines (lootboxes have been curtailed, and are only cosmetic), game developers nonetheless continue employing ongoing revenue schemes that often use powerful and potentially abusive psychological mechanisms designed to induce excess spending, such as the tokenization of money via "premium currency" or designing storefronts/price lists in ways that require spending extra money to get an item, both of which are present in 2019's surprise hit Apex Legends.

The last time this issue was raised, I supported potential government intervention as I expected it would cause the gaming industry to self-regulate, lest the government end up doing the ESRB's job for them. While this has proven to be true, in my view, a large portion of the gaming industry remains hostile to consumers--especially some of the largest and most influential companies. Today, I continue to support ongoing scrutiny of commercial practices in gaming in hopes of fostering a healthier relationship between studio and customer, whether mediated by the government or not. The Digital Gaming Advisory Group creates a means of maintaining ongoing pressure on the video games industry to maintain ethical business practices.

This is particularly important given the scale of video games today, and the speed with which they change. As the ESA itself points out, the video game industry now dwarfs

the movie industry in terms of size and influence. Modern video games have access to our pockets, living rooms, and wallets in ways most other industries could only dream of. That additional power should come with additional responsibilities to the consumer, which the ESA and ESRB are shirking.

During a previous hearing in April 2019, an ESA representative was present and argued the issue should be investigated, however they believed it should be investigated at the FTC level, where there was going to be a "workshop." However, that workshop would have no conclusions or actionable information, nor would it properly investigate the issues at hand. As such, the argument seemed like a bad-faith effort to deflect the possibility of real investigation and research, and it only underlines the importance of having an independent commission research these issues and provide recommendations to the legislature.

The issues at play are nuanced, and the ability for game developers to patch and change games after launch means the methods of ongoing monetization may change, for better or worse. Last time this issue was raised, the problem was lootboxes and variable reward operant conditioning. Today, it may be the tokenization of money and obscuring the real cost of digital items in a way that induces excess spending. It seems reasonable to have a panel of experts who can provide ongoing evaluation of these companies until a set of best practices can be negotiated and established. As such, I support the creation of a body to evaluate these issues and present their findings to the legislature.

Mahalo for your time and consideration.

**HCR-224-HD-1**

Submitted on: 4/18/2019 9:36:19 AM

Testimony for GVO on 4/18/2019 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Patrick Karjala	Individual	Support	No

Comments:

Dear Honorable Members of the join committees,

I am writing today to voice SUPPORT for HCR 224 HD 1. It is imperative that work be done to study the effects of "loot boxes" and other similar practices in video games, both on computers and mobile devices, and their effects on the spending habits of today and future youth.

Mahalo,

Patrick Karjala  
Honolulu, HI